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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209-AA00 and 3209-AA38

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Interim final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics (OGE) is issuing this rule to make inflation adjustments for each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE.

DATES: This interim final rule is effective August 1, 2016. Written comments are invited and must be received on or before August 1, 2016.

ADDRESSES: You may submit comments, in writing, to OGE on this interim final rule, identified by RINs 3209-AA00 and 3209-AA38, by any of the following methods:

Email: usoge@oge.gov. Include the reference “Civil Monetary Penalties Inflation Adjustments Interim Final Rule” in the subject line of the message.

Fax: (202) 482-9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005–3917, Attention: “Civil Monetary Penalties Inflation Adjustments Interim Final Rule.”

Instructions: All submissions must include OGE’s agency name and the Regulation Identifier Numbers (RINs), 3209-AA00 and 3209-AA38, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE’s website, www.oge.gov. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Government Ethics (OGE) is issuing this interim final rule as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114-74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410) (the Inflation Adjustment Act) to adjust for inflation the civil monetary penalties (CMPs) provided in the Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act). As explained below, all of the Ethics Act CMPs are being raised in accordance with the formula set forth in the 2015 Act. These “catch-up” adjustments will improve the effectiveness of the Ethics Act CMPs and maintain their deterrent effect.

In revising the Inflation Adjustment Act, the 2015 Act requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule. The 2015 Act also requires agencies to make subsequent annual inflationary adjustments of their CMPs. Under the 2015 Act, the interim final rule with the “catch-up” adjusted penalties must take effect by August 1, 2016. In the case of the Ethics Act CMPs, the effective date of this rulemaking regarding the “catch-up” adjustments is August 1, 2016.

OGE emphasizes that the increased civil monetary penalty amounts calculated under the 2015 Act are applicable only to civil penalties assessed after August 1, 2016

whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Act. Therefore, violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts currently in effect. The modified OGE regulatory provisions will reflect the original, previously-adjusted and newly-adjusted Ethics Act CMP amounts. OGE will notify departments and agencies by memorandum of this rulemaking action and its effect.

Ethics Act CMPs

There are five CMPs provided for in the Ethics Act, as amended inter alia by the 1989 Ethics Reform Act and the 2007 Honest Leadership and Open Government Act (HLOGA). Specifically, the law provides for civil penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations: knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; negligent breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702(a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

In a 1999 rulemaking, 64 FR 47095, Aug. 30, 1999, OGE made inflation adjustments to the Ethics Act civil monetary penalties. These adjustments were mandated by the Debt Collection Improvement Act of 1996, section 31001 of Public Law 104-134, 110 Stat. 1321, which revised the Inflation Adjustment Act to require Federal agencies to adjust certain statutory CMPs for inflation. Prior to the 1999 rulemaking, the Ethics Act CMPs were set by statute in the Ethics Reform Act of 1989. In the 1999 rulemaking, OGE increased the maximum civil monetary penalties for knowing and willful breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions from \$10,000 to \$11,000. OGE also increased the maximum civil monetary penalty for negligent breach of a qualified trust by trustees and interested parties from \$5,000 to \$5,500. In that same rulemaking, OGE adjusted the maximum civil monetary penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report from \$10,000 to \$11,000; however, in the 2007 HLOGA, Congress statutorily increased that penalty to a maximum of \$50,000. No further adjustments have been made to any of the Ethics Act CMPs described in this paragraph.

Late Filing Fee Not a CMP

The Office of Government Ethics notes that it has previously determined, after consultation with the Department of Justice, that the \$200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. appendix, 105(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a civil monetary penalty as defined under the Federal Civil Penalties

Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it previously adjusted by OGE in the 1999 rulemaking), and will remain at its current amount of \$200.

Calculation of Inflation Adjustments

The “catch-up” adjustments to civil monetary penalties mandated by the 2015 Act are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year of the previous adjustment (not made under the Inflation Adjustment Act), and the October 2015 CPI-U. The inflation adjustments are to be rounded to the nearest dollar, and agencies may not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. Subsequent annual adjustments for inflation mandated by the 2015 Act will be based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year’s October CPI-U.

With the exception of the penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. appendix, 104(a), 5 CFR 2634.701(b), all of the Ethics Act CMPs were last adjusted other than pursuant to the Inflation Adjustment Act by the 1989 Ethics Reform Act. (As discussed above, the adjustments made in the 1999 rulemaking were done pursuant to amendments to the Inflation Adjustment Act; the “catch-up” adjustment calculation established by the 2015 Act requires agencies to make adjustments based on when CMPs were established or last adjusted other than pursuant to the Inflation Adjustment Act.) For these CMPs, the adjusted penalties established by this rulemaking will be calculated by

multiplying the penalty amount established by the 1989 Ethics Reform Act and 1.89361, the CPI-U multiplier for 1989. The penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report was most recently adjusted by statute in 2007 by HLOGA. For this CMP, the adjusted penalty established by this rulemaking will be calculated by multiplying the penalty amount established by HLOGA and 1.13833, the CPI-U multiplier for 2007. None of these adjusted penalties are more than 150 percent of the corresponding levels in effect on November 2, 2015.

Applying the formula established by the 2015 Act, OGE is amending the Ethics Act CMPs to further increase the three previously-adjusted \$11,000 maximum penalties reflected in 5 CFR 2634.702(a) and 2634.703 and 5 CFR 2636.104(a), to a maximum of \$18,936; to increase the one previously-adjusted \$5,500 maximum penalty reflected in 2634.702(b), to a maximum of \$9,468; and to increase the one previously-adjusted \$50,000 maximum penalty, reflected in 5 CFR 2634.701(b), to a maximum of \$56,916. As noted above, these new amounts apply only to civil monetary penalties that are assessed after August 1, 2016 whose associated violations occurred after November 2, 2015.

The Office of Government Ethics will also make future adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act, which provides for annual adjustments for inflation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as General Counsel of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies adoption through an interim final rulemaking. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect. However, OGE notes that, in order to provide an appropriate period for notification to executive branch departments and agencies and their employees, the effective date for this interim final rule is August 1, 2016.

Regulatory Flexibility Act

As the designee of the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been reviewed by the Office of Management and Budget, even though it is not deemed “significant” under section 3(f) of Executive Order 12866 since it is limited to the adoption of statutorily mandated inflation adjustments without interpretation.

Executive Order 12988

As General Counsel of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: June 22, 2016.

David J. Apol,

General Counsel, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634 – EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114-74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.101 is revised to read as follows:

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

3. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

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(b) Civil action. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 104(a) of the Act, as amended, and as

adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation or Assessment	Penalty
Violation occurring before Sept. 29, 1999	\$10,000
Violation occurring between Sept. 29, 1999 and Sept. 13, 2007	\$11,000
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	\$50,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	\$50,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	\$56,916

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4. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation or Assessment	Penalty
Violation occurring before Sept. 29, 1999	\$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	\$11,000

Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	\$18,936
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(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of Violation or Assessment	Penalty
Violation occurring before Sept. 29, 1999	\$5,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$5,500
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	\$5,500
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	\$9,468

5. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set

forth below, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

Date of Violation or Assessment	Penalty
Violation occurring before Sept. 29, 1999	\$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2016 and penalty assessed on or before Aug. 1, 2016	\$11,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	\$18,936

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

**PART 2636 – LIMITATIONS ON OUTSIDE EARNED INCOME,
EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER
EMPLOYEES**

6. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114-74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

7. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) Civil action. Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in

any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set forth below, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

Date of Violation or Assessment	Penalty
Violation occurring before Sept. 29, 1999	\$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	\$11,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	\$11,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	\$18,936

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